

Defendant

Criminal No. 18-10479-PBS
Pages 1 - 22

SENTENCING

A P P E A R A N C E S:

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Room 9200, Boston, Massachusetts, 02210, for the Plaintiff.

JESSICA P. THRALL, ESQ., Federal Public Defender Office,
51 Sleeper Street, 5th Floor, Boston, Massachusetts, 02110,
for the Defendant.

ALSO PRESENT: Tricia Marcy, United States Probation Office.

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts 02210
July 18, 2019, 2:42 p.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
(617) 345-6787

P R O C E E D I N G S

THE CLERK: Court calls criminal 18-10479, United States v. Lenord. Could counsel and Probation please identify themselves.

MR. MALLARD: So good afternoon, your Honor. Philip Mallard for the United States.

THE COURT: Thank you.

MS. THRALL: Good afternoon, your Honor. Jessica Thrall for Alain Lenord.

MS. MARCY: Good afternoon. Tricia Marcy for Probation.

THE COURT: Thank you very much. You may be seated.

I've got a couple letters, briefs. And let me just say, I do understand that this is a binding plea agreement, which, just to alleviate everybody's suspense, I will accept.

Do you still want me to accept the guilty plea?

MS. THRALL: Yes.

THE COURT: All right, so I enter now the plea of guilty. I find it's competent and supported by an independent basis in fact, and I accept it.

I say that and I say the following, which is, I always respect the Probation Department's view on the Guidelines. There's one in particular -- well, two of them actually raise some close questions. So I'm going to calculate the Guidelines consistent with the plea agreement, but I do acknowledge that

1 there is a substantial question based on that case about if you
2 have an obliterated number on one side but not on the other.
3 The First Circuit didn't resolve that question. It's a gray
4 area. And I am just simply saying, because it wasn't
5 completely obliterated, the purpose of the Guideline I think
6 was to give you that level bump-up because you were hiding who
7 you had it; but if it was plain and clear on part of it, is
8 that the case from the government's view?

9 MR. MALLARD: Essentially, your Honor --

10 THE COURT: On the frame there was a --

11 MR. MALLARD: The frame and the slide were intact, and
12 it was the interchangeable barrel that was obliterated.

13 THE COURT: That's right. And so I understand where
14 the Probation Department came down on that, and it's an open
15 legal question in our circuit, and I will accept the plea that
16 resolves that.

17 The second thing is, was it done in furtherance of a
18 drug trafficking? I suppose it's a plausible claim, but if the
19 government chooses not to put on evidence on that, I don't feel
20 like I have a record to go with it. So I do thank Probation,
21 as always, in really giving an honest look at it because we
22 don't appreciate it when facts or law is bargained away; but
23 here I think they were both gray areas, and I understand the
24 basis for the plea. So if I'm wrong for some reason on the
25 Guidelines, I would vary to this point anyway.

1 So that puts us at a total offense level of 17,
2 Criminal History Category of III, a 30- to 37-month range of
3 incarceration, supervised release of three years, and a fine
4 range of \$20,000 to \$200,000. I forget -- oh, I probably have
5 to go down, right?

6 MS. MARCY: Yes. The fine range, based on your
7 findings, is now \$10,000 to \$95,000.

8 THE COURT: Okay, I forgot to adjust that. Thank you.

9 MS. MARCY: And a special assessment of \$100.

10 THE COURT: Okay. So no count of conviction carries a
11 mandatory minimum sentence, and I decline at this point, based
12 on the full record, to downwardly depart from the Criminal
13 History Category III. That's not so relevant anymore. But, in
14 any event, what is the argument for the government on this?

15 MR. MALLARD: Your Honor, the government is
16 recommending the Court impose the 37 months that's set forth in
17 the plea agreement. With the Court's calculation of the PSR,
18 it certainly falls within the Guidelines; but with respect to
19 the factors under 3553, the government's position is that this
20 sentence more than adequately -- it's the least severe sentence
21 that can be imposed to satisfy the requirements under the
22 statute. In particular, I'd note that the criminal history of
23 the defendant is largely driven by that prior Brockton drug
24 case, which not only increased the offense level but also, upon
25 his revocation for that, ends up being a two-point increase for

1 the criminal history. And then he was also on probation, so
2 there's sort of a three-part increase to this defendant's
3 criminal history resulting from one prior case, which was a
4 significant case involving stolen property and a decent amount
5 of fentanyl as well which was over trafficking weight. That
6 being said, coupling that prior case with the case under
7 indictment and then the incident that we're now before the
8 Court with, it's a significant criminal history that's
9 reflected in the 37 months. And obviously it's a significant
10 sentence for this defendant who has not --

11 THE COURT: I had a question. There's a pending state
12 case, right?

13 MR. MALLARD: That's correct.

14 THE COURT: And what is the status of that?

15 MR. MALLARD: I believe it's on for a motion hearing
16 in January.

17 THE COURT: Next January?

18 MR. MALLARD: In Norfolk Superior Court, your Honor,
19 yes.

20 THE COURT: What is that about?

21 MR. MALLARD: I believe there's going to be some
22 suppression of -- well, I know some discovery motions are
23 pending regarding --

24 THE COURT: No, no, no, I meant more the nature of the
25 charges.

1 MR. MALLARD: The nature of the charges involve
2 essentially a home invasion at gunpoint.

3 THE COURT: And that's being pressed forward?

4 MR. MALLARD: Correct.

5 THE COURT: I say that not because it's affecting my
6 sentence in any way, but it's such a different charge that I'm
7 not inclined to say I am going to run my sentence concurrent
8 with it.

9 MR. MALLARD: Okay.

10 THE COURT: That's the one open issue that appears not
11 to have been pled away one way or another. It's up to the
12 state court. If the state court wants to run theirs
13 concurrently, that's a call for the state judge. That said, it
14 has nothing to do with the charge in this case apparently. It
15 wasn't like the gun that was used in this case or some such.
16 So I do not make a ruling with respect to the state case one
17 way or another and leave it up to the state court. Sometimes I
18 say I want it run concurrently. I'm not saying that because I
19 think it's, frankly, a far more serious charge, and a judge on
20 the state court may well decide to run it consecutively.

21 MR. MALLARD: Certainly, your Honor. I think the last
22 point that I'll make with respect to the sentence
23 recommendation and the agreement is that the deterrence message
24 that I think this sentence sends, not only to this defendant,
25 who I'll note has a rather remarkable personal history that's

1 reflected in the PSR. I think he has a lot of opportunity to
2 move forward, and it's unfortunate that this type of
3 interaction with the criminal justice system is the basis for
4 him to move on in his life; but I do think counsel's sentiments
5 in the sentencing memorandum and his personal history reflect
6 that the significant sentence he's going to receive are perhaps
7 the impetus towards a correction in his life going forward. It
8 also sends a very loud and clear general deterrence message to
9 those who would possess firearms, especially those facing
10 felony offenses, and violent felony offenses at that. This
11 sentence was negotiated and imposed within two or three months
12 of the case coming up here, and I think the swiftness of that
13 is something that the Court should also -- that is reflected in
14 the agreement that --

15 THE COURT: What are the conditions you're recommending
16 for supervised release?

17 MR. MALLARD: Your Honor, normally in cases like this
18 we look towards potential geographic restrictions, but in this
19 case, I'm not seeking those, and that's largely because the
20 defendant has an extensive support system, which from what I
21 understand is based in Brockton, though that's also, as I would
22 note, perhaps where some of his criminal connections have been
23 historically. So weighing them against the other, I certainly
24 don't want to put him in a position where he's isolated from
25 his support, even though it runs the risk of placing him in

1 close geographic proximity to those that don't necessarily have
2 his best interests at heart.

3 I would ask the Court to recommend the vocational
4 training that's available in the BOP because I do think he has
5 a large potential to --

6 THE COURT: What did you say?

7 MR. MALLARD: The vocational training.

8 THE COURT: I can't order that. I mean, I can
9 recommend. I'll hear from defendant about where he wants to
10 go.

11 MR. MALLARD: Other than that, your Honor, I don't
12 necessarily have any specific conditions.

13 THE COURT: Okay, thank you. I know Probation has
14 recommended some.

15 All right, Ms. Thrall.

16 MS. THRALL: Thank you, your Honor.

17 THE COURT: I did read the letters, and I notice there
18 are probably some family members here.

19 MS. THRALL: Yes, your Honor. The authors of both of
20 those letters are here. Ms. Randolph Brown is in the green
21 shirt, and then Alain's parents, Pascale and Raymond Cajuste,
22 are present along with Alain's girlfriend.

23 So I think that Mr. Mallard is correct. You know,
24 Alain has a really tremendous support system in the Brockton
25 area, and his family has just stuck by him through all of this.

1 And it's really been a lot of interaction with the court system
2 even just within the last year. Mr. Lenord has really prior to
3 this only been in prison or jail ever for a couple of months,
4 and as Mr. Mallard was describing, it was --

5 THE COURT: So what happened here? You know, between
6 this case and very serious charges on the state level, which
7 are so much more serious than what we've got here, what's
8 happened?

9 MS. THRALL: The state charge is its own animal, your
10 Honor. The circumstances of that are incredibly complicated.
11 I did write some very specific responses to the way that that
12 charge was characterized in the PSR. We expect that that case
13 is going to go to trial. The evidence against Mr. Lenord is
14 very thin on that case.

15 THE COURT: It's a charge of kidnapping.

16 MS. THRALL: It's a home invasion and a kidnapping,
17 your Honor. It's a very serious charge.

18 THE COURT: It's a very serious charge.

19 MS. THRALL: A very serious charge. But Mr. Lenord
20 was actually not charged at all with that for a year. It
21 happened, and he was indicted under a direct indictment a year
22 later because they thought somebody else did it. And then at
23 the last moment, a witness at the grand jury changed their mind
24 and said, "No. Actually, it was Alain Lenord." The entire
25 situation is --

1 THE COURT: I'm just simply saying, what happens to
2 him really is not going to be driven so much by this sentence
3 as much as it's going to be driven by if he gets convicted or
4 not in state court because --

5 MS. THRALL: I agree.

6 THE COURT: -- if he gets convicted of that, it's
7 likely a long sentence.

8 MS. THRALL: I agree, and I fully expect that that
9 case is going to trial. The prosecutor -- I've been working
10 closely with his state court defense lawyer on that case so
11 that some aspects of this could be coordinated. I'm not asking
12 the Court to impose a concurrent sentence. That was not part
13 of any agreement.

14 THE COURT: No, and that's why I'm not. I sometimes
15 do that on my own. I do not view that as a violation of a (c)
16 plea where it hasn't been addressed, but this is -- it's like
17 comparing apples and oranges and to the severity of the various
18 issues. One is highly violent and the other one is illegal. I
19 mean, it involves a gun. I mean, let's not -- it's a gun.
20 It's a gun and drugs, which is not exactly a great thing, but
21 it's not the same as a kidnapping.

22 MS. THRALL: But to get closer to answering your
23 question, your Honor, is that, you know, Alain had, you know --
24 Alain was exposed in Brockton to a lot of people and a lot of
25 influences that were not necessarily positive. And at one

1 point when he was finishing up high school, his family chose to
2 remove him from Brockton, and he went to live with a family
3 member in Pennsylvania to finish up high school because there
4 were so many issues in that high school, so much violence in
5 that high school, that they needed to remove Alain and get him
6 out of there. At one point he was not allowed to go back to
7 school, not because of his behavior but because of other
8 violence happening in the school associated with other people
9 who he knew. So it was a very complicated, dangerous high
10 school scenario, which in a lot of ways is really sad that that
11 is what public high school in Brockton looks like.

12 And, you know, Alain is very young. This was not that
13 long ago. This is all in the last, you know, three, four, five
14 years. So the family made a choice to send him off to finish
15 up high school in Pennsylvania. He did. He graduated. He's
16 very bright. He went to college. You know, he has so much
17 potential. And, you know, we've provided some information from
18 his schools and, you know, the job training that he's had. He
19 has so many rich opportunities available to him. But it's also
20 still really hard to completely separate yourself from your
21 friends, even when those friends are not the best influences,
22 and I think that that's a lot of why we're here for this case.
23 I don't want to speak to the open case because I think it's a
24 lot more complicated, but in terms of why we're here and why
25 this charge happened, that's I think my best way of being able

1 to explain it.

2 THE COURT: So what Probation is recommending, in
3 addition to the mandatory and standard conditions, is substance
4 abuse counseling as directed by the Probation Office, which may
5 include testing not to exceed 104 drug tests per year. That
6 makes sense, right?

7 MS. THRALL: We're not opposed to that, your Honor. I
8 think it's pretty standard for drug testing to --

9 THE COURT: Right. So the manualized cognitive
10 behavioral therapy. Normally I like them to enter in one of
11 these courts afterwards, but that may be hard for him to get to
12 from Brockton.

13 MS. THRALL: Right, but Restart, your Honor?

14 THE COURT: Yes.

15 MS. THRALL: I think that that would be a great option
16 for --

17 THE COURT: Why don't I recommend Restart, and if for
18 some reason he is unable to get there, he won't go. But let me
19 ask you this: Are you suggesting the manualized cognitive
20 behavioral treatment program in addition to or in lieu of
21 Restart?

22 MS. MARCY: I think that we would screen him for all
23 of our court programs, and if he's an appropriate candidate,
24 the recommendation for Restart doesn't hurt and can be in
25 addition to.

1 THE COURT: Okay. And then vocational services
2 training. What does he want to be, do you know? Well, I'll
3 ask him when he stands up and talks to me.

4 MS. THRALL: That's fine, your Honor, yes. I think he
5 has a lot of choices, and he's had a lot of exposure to
6 different careers. He's done roofing, he's done construction.
7 He's done some culinary stuff, so I think that he has a lot of
8 trainings.

9 THE COURT: So he may not need the vocational
10 training.

11 MS. THRALL: He might not.

12 THE COURT: Well, I'll ask him. All right, is he
13 going to talk to me? Is he going to allocute?

14 MS. THRALL: Yes.

15 THE COURT: Okay, sir, let me hear from you.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: Good afternoon.

18 THE DEFENDANT: Would you like to hear my letter
19 first?

20 THE COURT: Yes. Well, yes, you can read it if you
21 want, or you can just talk to me. You know what I suggest you
22 start with? And maybe you were going to do this anyway, but
23 usually, or many times, a defendant comes here all by himself
24 without a single person in the room to support him, and I think
25 one of the most wonderful things that you have going for you is

1 not just the letters but the fact that you've got a community
2 out there. So why don't you introduce them to me. Who's here?

3 THE DEFENDANT: That's my dad.

4 THE COURT: Okay.

5 THE DEFENDANT: And that's my mother, Pascale.

6 THE COURT: All right.

7 THE DEFENDANT: That's my girlfriend, Cassandra. She
8 gets emotional all the time. And that's my Aunt Cara.

9 THE COURT: Okay.

10 THE DEFENDANT: My dad has been in my life since I was
11 like, I want to say --

12 THE COURT: All right, you may be seated. Thank you
13 for coming.

14 THE DEFENDANT: -- like nine years old, I want to say,
15 nine, ten years old. My biological father, I had an iffy
16 relationship with him, but --

17 THE COURT: I read about it. I'm sorry. No one
18 should go through that kind of childhood.

19 THE DEFENDANT: I still love him, but, you know,
20 there's just certain expectations out of me too, but I can't
21 blame him for certain things, you know?

22 My mom has always been by my side, wrong or right,
23 since I was a young kid. I've always been led in the right
24 path. I played basketball all my life. I traveled around the
25 world. It's crazy to say because she never really had the time

1 to even see me play basketball because she was always working,
2 but my stepdad was always there to see me play.

3 THE COURT: You played Brockton High?

4 THE DEFENDANT: I played Brockton High. I played AU.
5 I played with multiple people that's in the NBA now overseas.
6 I played college ball. I met a lot of people through
7 basketball as far as, like, influences, people that are not
8 good people as well. I can say that. But I'm not ashamed of
9 myself that I'm going through this situation I'm going through
10 because I know it's going to make me a better person and I'm
11 going to be more wiser, be a better role model to my brother
12 and sister. I've got two brothers and sisters. Well, I've got
13 a brother and a sister. They're twins.

14 THE COURT: They're twins, right?

15 THE DEFENDANT: Yes.

16 THE COURT: Well, let's put it this way: You've got
17 this loving family. You've got twin siblings. You've got
18 people who are here for you. So how are we going to make
19 sure -- you have horrible charges pending against you in the
20 state and these serious charges here, so once we're past all of
21 that, what is going to help you lead a lawful and happy life?

22 THE DEFENDANT: Focusing on myself and my family more
23 than anything, I'd say that; putting a lot of things behind me.

24 THE COURT: I get that, and I hope that that's the
25 case.

1 THE DEFENDANT: You're saying how am I going to do it?

2 THE COURT: Yes, how are you going to do it? So what
3 kinds of jobs do you want? What do you want to do with your
4 life?

5 THE DEFENDANT: I want to own my own business.

6 THE COURT: What kind?

7 THE DEFENDANT: It's kind of complicated.

8 THE COURT: I've got time. What do you want to do?

9 THE DEFENDANT: Uhm, there's a lot of things I want to
10 do. I want to -- I had in mind of opening my own landscaping
11 business.

12 THE COURT: You like flowers and plants and shrubs?

13 THE DEFENDANT: Yeah, I like it outside.

14 THE COURT: You like being outside?

15 THE DEFENDANT: I do.

16 THE COURT: All right.

17 THE DEFENDANT: I'm a hands-on person. I learn very
18 quickly. I did roofing for about a year or two. I fell off a
19 roof. I'm scared of heights anyway, so it kind of evened out.
20 But I love cooking. I don't cook all the time, but --

21 THE COURT: Do you want to do cooking for a living or
22 just for eating?

23 THE DEFENDANT: I mean, I got my ServSafe certificate,
24 and I could have been a cook, a chef on a cruise, but I didn't
25 come out the best cook, I guess, so --

1 THE COURT: Well, I'm going to recommend vocational
2 training, but it's useful for me to know what area you would
3 want to be in because you need to earn a living lawfully.

4 THE DEFENDANT: Yes.

5 THE COURT: And hopefully at some point have a family,
6 live a happy life.

7 THE DEFENDANT: Exactly.

8 THE COURT: There's bad parts of Brockton, but it also
9 can be a beautiful city. So you don't even have to stay in
10 Brockton. You could go back to Pennsylvania. You can do
11 whatever you want if you're lawful.

12 So this is what I want you to be thinking about. I
13 don't know what will happen with the state case. That's
14 critical to your future, and that's something that I can't
15 control. I will impose the agreed-upon sentence, but I have to
16 tell you, the Probation Department had some valid concerns
17 about whether it should have been higher or not, partly because
18 the gun was in the car at the same time that you were selling
19 drugs. So was there a nexus or not? I don't know. We could
20 have had a two-day-long hearing, but I'm not inclined to do
21 that. But what I am inclined to say is, you're in a transition
22 point in your life, an absolute transition point where you can
23 actually go off a cliff and spend a lot of the rest of your
24 life in jail or prison, which is horrible.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: Or you can take advantage of it, and with
2 this wonderful family backing you up, you can do vocational
3 training. You never did get your college degree, did you?

4 THE DEFENDANT: No.

5 THE COURT: And maybe at some point get your college
6 degree, and get a job landscaping sounds lovely actually,
7 although it is seasonal. You may need two kinds of jobs, do
8 the landscaping and then something else during the winter,
9 because right now in Massachusetts, anyone who wants to work
10 can work. We have the lowest unemployment I think in history,
11 in my memory. Anyone who wants to work lawfully can work at
12 this point, and you need to put yourself in a position --
13 hopefully it will be this way when you get out -- to be able to
14 work, to have a family, to support the woman you care for, you
15 love, and just put this behind you.

16 So I am going to adopt the sentence. I am not taking
17 a position as to whether it should be concurrent or not
18 concurrent. I leave that up to the state court judge. I am
19 going to accept all the mandatory and standard conditions that
20 are basic things, like not possess controlled substances, not
21 commit crimes, not have a gun. I'm also picking up substance
22 abuse counseling, drug testing, manual cognitive behavioral
23 therapy, if appropriate, one of the either drug or Restart
24 courts, and I think vocational services training. I think that
25 that will be important for you when you get out.

1 And last but not least, where should -- I don't
2 know -- I assume -- what happens now? Is he in state custody?

3 MS. THRALL: No, your Honor. Originally when
4 Mr. Lenord was charged, his bail was a personal recognizance.
5 So there's actually -- the state court is not holding him right
6 now. A bail was later set that was posted, I think a \$500
7 bail. So the state court is not holding him. He is going to
8 be transferred to a federal facility after the judgment issues
9 and he gets designated.

10 THE COURT: Well, I'll recommend a facility as close
11 as possible to New England. I have several of these that look
12 like this. I forget. He has a drug problem? Should I
13 recommend RDAP?

14 MS. THRALL: I think we did screen for RDAP, your
15 Honor.

16 THE COURT: I forget. I should have looked at that.

17 MS. MARCY: I think it's not enough time, your Honor.

18 THE COURT: For 37 months? Yes, he would. He might.

19 MS. MARCY: He's served some already.

20 THE COURT: Oh, he's already served a year or
21 something?

22 MS. MARCY: I think it's been a year, but, I mean, it
23 doesn't hurt to recommend it.

24 THE COURT: I'll recommend RDAP, but mostly, if he's
25 not qualified, just to a facility close to New England, close

1 to your family --

2 MS. THRALL: Yes.

3 THE COURT: -- potentially. I don't know if he'd be
4 medium or low security at this point.

5 MS. THRALL: With an open case, your Honor, I think he
6 might be medium.

7 THE COURT: Okay, so FCI Berlin is one possibility.
8 At least it's in New Hampshire. It's a long drive, believe me,
9 even though it's in New Hampshire, but at least it's better
10 than someplace where you can't drive to, and I'll recommend
11 that.

12 MS. THRALL: Thank you.

13 THE COURT: The other thing they have, which I urge
14 you to perhaps take care of it, Berlin, the Probation
15 Department has a program where you can towards the end of your
16 sentence get jobs in the city, and you're sponsored by the
17 Mayor. They have a pipeline program. But I don't want you to
18 be the bottom-line menial job, right? You went to college, you
19 know? I want you to, you know -- I don't know if these
20 institutions allow you to do online college courses, but at the
21 very least, you should be getting vocational training. And if
22 it's cooking, it's cooking. If it's landscaping, it's
23 landscaping. Both of those are pretty, I hate to say it, sort
24 of sometimes don't pay very much, but it's some way to earn
25 your living, or at least be a starter for you when you get out.

1 So I accept this. It's a three-year term of
2 supervised release. And I hope that you find your way back to
3 the standards that this wonderful family sponsored you for.

4 So anything else I need to deal with?

5 THE DEFENDANT: Thank you.

6 MR. MALLARD: No, your Honor.

7 MS. THRALL: No. Thank you.

8 THE COURT: 37, yes. I'm sorry. It's a binding plea.
9 I accept the plea.

10 THE CLERK: I just need to read the notice of appeal.
11 The Court hereby notifies you of your right to appeal this
12 sentence. If you cannot afford the cost of an appeal, you may
13 move to proceed in forma pauperis. Any appeal from this
14 sentence must be filed with fourteen days of entry of judgment
15 on the docket.

16 Do you understand these rights?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right, thank you.

19 MS. THRALL: Thank you, your Honor.

20 MR. MALLARD: There's one last thing, your Honor. I
21 think there's a forfeiture order that the Court --

22 MS. THRALL: Oh, on the firearm.

23 MR. MALLARD: -- needs to identify orally on the
24 record.

25 THE COURT: All right, is there any opposition to --

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MS. THRALL: No.

THE COURT: All right, thank you very much.

(Adjourned, 3:08 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 22 inclusive, was recorded by me stenographically at
the time and place aforesaid in Criminal No. 18-10479-PBS,
United States of America v. Alain Lenord, and thereafter by me
reduced to typewriting and is a true and accurate record of the
proceedings.

Dated this 31st day of July, 2019.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER